

DDA 75-5901

OGC Has Reviewed

11 DEC 1975

MEMORANDUM FOR: Deputy General Counsel

SUBJECT : Your Paper No. VI Regarding Legislative
Proposals

Further reflections on your paper have stimulated the following comments:

- Re activity 15 on Impact of Restriction, the last sentence--It seems to be a gratuitous offer which although is normally our procedure there may be situations which would merit "probing into other matters." Since we do not have to, why say it.
- Re activity 20, Impact of Restriction--Word "confidential documents" should read "classified documents."
- Re activity 27--It is a very broad and sweeping statement and we submit difficult to defend as written.
- Re activity 38--Could be extended to include authority to covertly pay employees, covertly report payroll information, covertly report and remit taxes.
- Re activity 40--Change to read "CIA requires continued authority to accomplish the secure movement of funds, etc."
- Re activity 40, Impact of Restriction--Change wording to read "The procurement or exchange of foreign currencies through monetary agents domestically and abroad is the only, etc."
- Re activity 43, Impact of Restriction--Would suggest strengthening the impact by noting that without this provision we are dead in the water and to more forcibly note that we must have this authority.

--Re page 22, paragraph 5--There might be occasions when we would want to prepare a psychological profile on a U. S. citizen who has defected and in turn redefected back. We can think of no organization other than the CIA which would have the capability of providing such a profile. Believe it is essential we have that opportunity.

/s/ JOHN N. McMAHON

John N. McMahon
Associate Deputy Director
for
Administration

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ADDA:JNM McMahon:kmg (11 Dec 75)

ISSUE, OPTIONS, AND ACTIONS

PAPER NO. VI

Issue:

✓ How can this Agency prepare for, and effectively address, legislative proposals which would seek to insure that foreign intelligence activities are conducted with due respect for constitutional rights of American citizens?

Congressional Committee Positions:

✓ In view of the scope of the congressional investigations, the amount of time which has been spent, and the publicity which has been generated, it would be difficult, on political grounds alone, for the Congress to avoid enacting some legislation, if only to reassure the American people that their rights are being protected and that the legislative branch is now "in control" of the situation. In addition, the focus on "abuse" areas by both the House and Senate Select Committees is strong indication that corrective legislation is contemplated.

Options:

1. This Agency can attempt to anticipate legislative proposals establishing restrictions on foreign intelligence activities and can examine the impact which such legislative restrictions would have on the effectiveness of the United States foreign intelligence effort. A number of possible bills are listed in section A of the attached memorandum.

2. Given the creativity of the Congress in proposing new legislation, it seems less profitable to speculate about possible bills than to define core Agency interests which either involve activities within the United States or involve United States citizens. Any proposed legislation could then be measured against this core list and only to the extent that a bill impacted on such

core interests would this Agency actively seek a revision of that bill. In addition, the Agency might seek legislation expressly authorizing certain of these core activities. These core activities or interests and the impact of legislative restrictions are presented in section B of the attached memorandum.

3. This Agency might adopt an active rather than a reactive stance toward possible legislation. Instead of merely evaluating the impact of legislative proposals, the Agency itself might suggest legislation which would serve the interest of Congress by reassuring the American people that the intelligence community is operating within carefully controlled boundaries while at the same time ensuring that legislation does not erode this Agency's capability to perform its statutory duties. The kinds of legislation which this Agency might recommend are very briefly outlined in section C of the attached memorandum.

Proposed Action:

1. The Deputy Directors should order the list of core activities into five levels of importance. These judgments when aggregated would indicate with a fair degree of precision the relative value or importance of each activity and assist the DCI and the Office of Legislative Counsel to undertake an educational effort proportional to the importance of the activity. The ranked list could then be given to the Director to be used, as the opportunity arises, to articulate and explain the authorities which this Agency requires. The list should also be sent to the Office of Legislative Counsel to be used as an aid in commenting on proposed legislation.

2. The proposed legislation in section C should be reviewed and possibly expanded. When a final list is compiled, the Office of General Counsel and the Office of Legislative Counsel in consultation with the directorates should be authorized to frame legislation pursuant to Option 3.

MEMORANDUM: Attachment to Issue, Options, and Actions Paper No. VI

A. Possible Legislation

In view of the public attention which has already been focused on certain intelligence activities, it is reasonable to assume that Congress, in an effort to ensure that the constitutional rights of U.S. citizens are not abused, may attempt to pass legislation restricting intelligence activities in at least the following ways:

1. Insofar as a great many activities have been justified on the basis of the proviso in 50 U.S.C. 403(d)(3) giving the DCI the responsibility for protecting intelligence sources and methods, legislation may be introduced narrowly restricting this responsibility or transferring such responsibility to the FBI.

2. Legislation may be proposed which would expand the right of privacy of CIA applicants, employees, and agents. Such legislation may restrict CIA's right to polygraph applicants or employees, restrict CIA's right to do psychological testing; restrict CIA's right to examine or control the outside activities of employees, including any restriction on marriage to foreign nationals; restrict or eliminate the DCI's termination authority [50 U.S.C. 403(c)] and provide for presence of counsel in any administrative or disciplinary proceeding against an employee. Such legislation would cripple the CIA personnel security program.

3. Concern with privacy issues might also lead to legislation prohibiting CIA from obtaining financial information on any individual. If such language included foreign nationals, in addition to U.S. citizens, Agency intelligence and counterintelligence activities would be restricted.

4. Legislation may be proposed which would restrict CIA contacts with, or recruitment of, certain individuals or groups of individuals. In order to protect the First Amendment guarantee of freedom of religion, CIA may be forbidden to recruit or in any way use "men of the cloth." In order to protect the freedom of the press, CIA may be forbidden to recruit or in any way use reporters or professional writers, to covertly contribute to, publish, or distribute books or other types of publications. Similarly, the political sensitivity of CIA contact with other groups, such as students and academic scholars, may lead to additional legislative restrictions. In the aggregate, such restrictions would narrow this Agency's recruitment base, reduce cover possibilities, and make

intelligence and counterintelligence activities more difficult.

5. Concern that the constitutional rights of U.S. citizens might be violated by CIA could also lead to legislation restricting CIA relationships with law enforcement agencies, for example, prohibiting CIA from passing information about the activities of U.S. citizens to Federal authorities. Legislation might also be proposed forbidding CIA from collecting any information on U.S. citizens, whether or not such information was collected in the United States. Such legislation would at the very least handicap CIA's ability to carry out its counterintelligence responsibilities.

6. Legislation designed to protect Fourth Amendment rights might be proposed which would prohibit technical surveillance activities by CIA. Specific language might prohibit all such activity, prohibit such activity directed against U.S. citizens, or might require in all cases that such activities only be conducted pursuant to a judicial warrant based upon probable cause. Such measures would to varying degrees damage CIA's intelligence collection capability.

7. Legislation might be proposed forbidding CIA contribution to domestic organizations. Such legislation could damage a number of Agency activities, including cover arrangements.

The impact of such legislative proposals would depend, of course, on the precise language of the bill. Some of these general concepts, however, have been the subject of bills which have been previously proposed. The impact of these bills has been examined and the result of such analysis is available from the Office of Legislative Counsel.

B. Core Activities

Below are listed 43 activities which are significant enough to be labeled "core interests" or "core activities." They include activities conducted in the U.S. or involving U.S. citizens some of which might appear to violate constitutional rights, some of which may seem "irregular" or "suspicious" to the average citizen, and some of which may appear to violate or be technical violations of statute or administrative regulations. In most cases these activities are presently legal, in some few cases, legislation would be required in order to legitimate the activity. In all cases these activities have been identified by the various components as important in order for this Agency to accomplish its mission.

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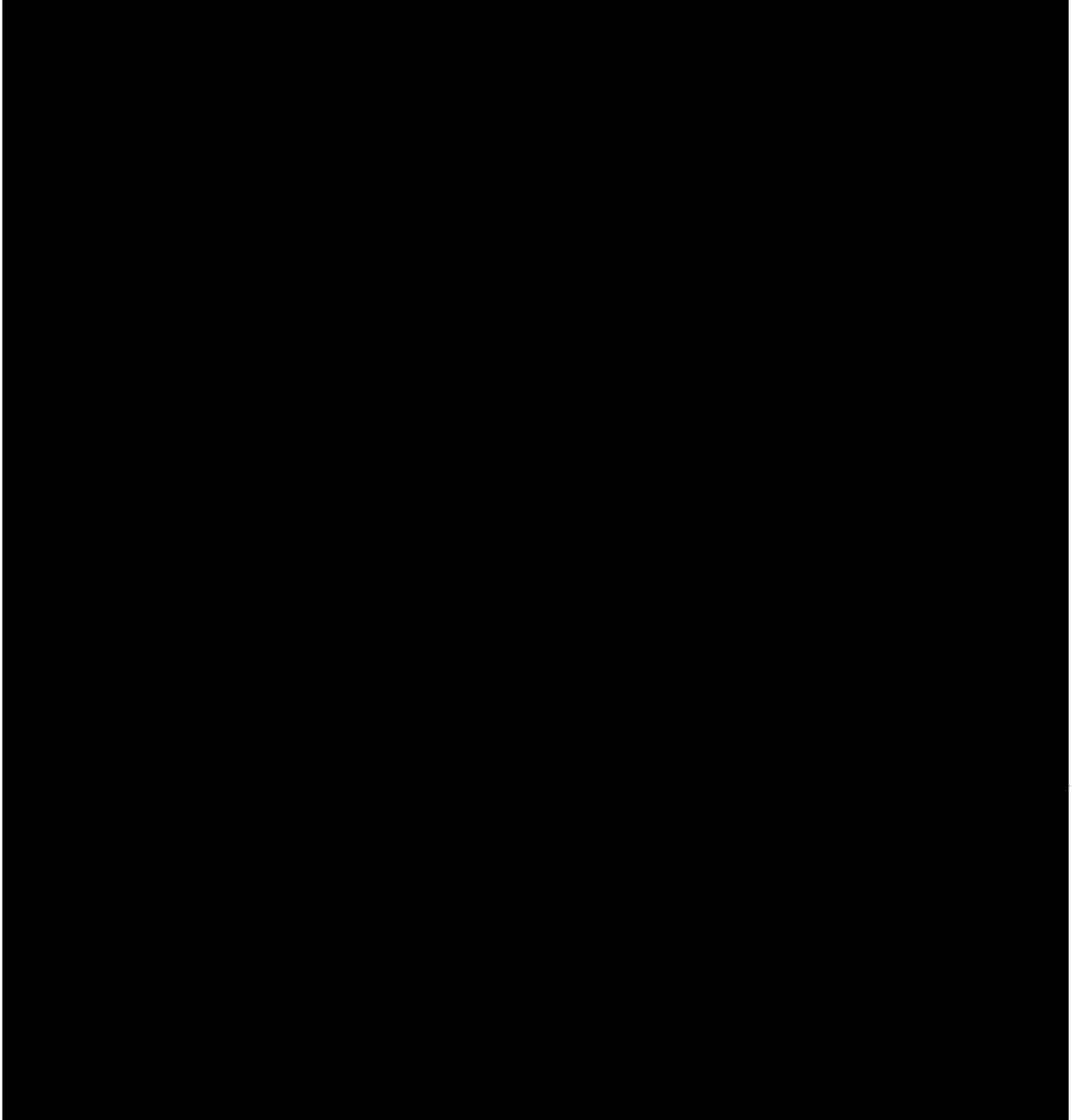
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service from the State Department or from the Secret Service; (d) With the approval of the Director of Central Intelligence and in accordance with procedural guidelines of the Attorney General, when the occasion does not permit Federal Bureau of Investigation assistance, in order to carry out custodial responsibilities with reference to a defector in the United States.

Impact of Restriction: At present only couriers and guards transporting confidential documents and materials may be authorized to carry firearms.



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Activity 24: CIA requires continued authority to provide specialized equipment or technical knowledge for use by any other Federal department or agency.

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Activity 31: The DCI requires continued authority to summarily reject an applicant or to discharge an employee.

Impact of Restriction: This is extremely important to the security of the Agency, both to avoid possible revelation of classified information in appeal hearings and to retain a capability for exercising control over the issuance of security approvals for Agency information, particularly if substantially lower clearance criteria are established in the future.

Activity 32: Legislation is required to provide criminal sanctions for the unauthorized disclosure of classified foreign intelligence information and intelligence sources and methods; to provide for effective injunctive authority; and to provide for penalties for impersonation of a CIA officer or use of the initials CIA with the intent to mislead or defraud.

Impact of Restriction: Continuation of the DCI's statutory responsibility to protect intelligence sources and methods is critical to the security of Agency operations. At present, however, this responsibility does not include any specific authority to implement that responsibility. The legislation suggested above would help the DCI to carry out his statutory responsibilities.

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C. Agency Legislative Suggestions

If it becomes clear that explicit legislative restrictions on CIA activities are inevitable, this Agency might propose the following measures which might reassure the American people without seriously eroding the Agency's ability to carry out the statutory responsibilities.

1. The CIA shall not conduct training or furnish equipment to local law enforcement personnel or organizations in the United States.

2. The CIA shall not undertake clandestine operations in the United States directed at the collection of intelligence information on domestic affairs or the activities of United States citizens except in connection with the protection of its personnel and installations and the conduct of employee or other security investigations.

3. The CIA shall not conduct physical surveillance in the United States of U.S. citizens or organizations except against employees of the Central Intelligence Agency or persons who work on behalf of the Central Intelligence Agency.

4. The CIA shall not conduct electronic surveillance or engage in surreptitious entries in the United States.

5. The CIA shall not prepare psychological profiles on United States citizens other than employees of the Central Intelligence Agency.

Director's ?